

U.S. Department of Homeland Security
Citizenship and Immigration Services

PUBLIC COPY

ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 Eye Street, NW
Washington, D.C. 20536

OCT 30 2003

FILE: WAC 01 241 50106 Office: CALIFORNIA SERVICE CENTER

Date:

IN RE: Petitioner:
Beneficiary:

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(iii)

ON BEHALF OF PETITIONER:

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

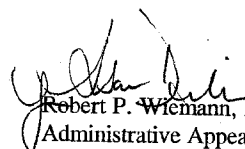
INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, California Service Center, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a pharmacy. It seeks classification of the beneficiary as a management trainee. The director determined that the training is general in nature, without a fixed training schedule, objectives or means of evaluation. In addition, the petitioner did not establish that the beneficiary would not be involved in productive employment. The director also found that the petitioner does not have sufficient staff to provide the proposed training.

On appeal, counsel submits a brief stating that the director erred in making these determinations. Counsel states that the training has a fixed schedule with objectives and evaluation. Counsel also states that the beneficiary will not be involved in productive employment, and that the petitioner has sufficient manpower to provide the training.

Section 101(a)(15)(H)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(iii), provides classification for an alien having a residence in a foreign country, which he or she has no intention of abandoning, who is coming temporarily to the United States as a trainee, other than to receive graduate medical education or training, in a training program that is not designed primarily to provide productive employment.

The regulation at 8 C.F.R. § 214.2(h)(7) states, in pertinent part:

(ii) Evidence required for petition involving alien trainee--(A) Conditions. The petitioner is required to demonstrate that:

(1) The proposed training is not available in the alien's own country;

(2) The beneficiary will not be placed in a position which is in the normal operation of the business and in which citizens and resident workers are regularly employed;

(3) The beneficiary will not engage in productive employment unless such employment is incidental and necessary to the training; and

- (4) The training will benefit the beneficiary in pursuing a career outside the United States.
- (B) Description of training program. Each petition for a trainee must include a statement which:
- (1) Describes the type of training and supervision to be given, and the structure of the training program;
 - (2) Sets forth the proportion of time that will be devoted to productive employment;
 - (3) Shows the number of hours that will be spent, respectively, in classroom instruction and in on-the-job training;
 - (4) Describes the career abroad for which the training will prepare the alien;
 - (5) Indicates the reasons why such training cannot be obtained in the alien's country and why it is necessary for the alien to be trained in the United States; and
 - (6) Indicates the source of any remuneration received by the trainee and any benefit, which will accrue to the petitioner for providing the training.
- (iii) Restrictions on training program for alien trainee. A training program may not be approved which:
- (A) Deals in generalities with no fixed schedule, objectives, or means of evaluation;
 - (B) Is incompatible with the nature of the petitioner's business or enterprise;
 - (C) Is on behalf of a beneficiary who already possesses substantial training and expertise in the proposed field of training;
 - (D) Is in a field in which it is unlikely that the knowledge or skill will be used outside the United States;
 - (E) Will result in productive employment beyond that which is incidental and necessary to the training;

(F) Is designed to recruit and train aliens for the ultimate staffing of domestic operations in the United States;

(G) Does not establish that the petitioner has the physical plant and sufficiently trained manpower to provide the training specified; or

(H) Is designed to extend the total allowable period of practical training previously authorized a nonimmigrant student.

The record, as it is presently constituted, contains: a training agreement signed by the petitioner; a chart describing the management training program; a letter from the petitioner; the beneficiary's resume; and a copy of a page from the beneficiary's passport.

The first basis for the director's denial of the petition is that the training is general in nature, without a fixed training schedule, objectives or means of evaluation. Counsel asserts there is a fixed training schedule, objectives and means of evaluation. The training schedule submitted with the original petition is in chart form, with a title for each segment, a description, the dates and time scheduled for that segment, and the total hours of training in each segment. The petitioner's Form I-129 states that the training will be full-time. The training schedule, however, indicates that each segment will be taught between three and five hours per day. Nowhere in the record is there any indication of what the beneficiary would be doing for the balance of each day. Nor is there any means of evaluation either in the schedule or anywhere else in the record. In the response to the director's request for evidence, the petitioner submitted another copy of the same chart, with only the time allotted for each segment (i.e., Monday-Friday, 1:30-5:30), and no specific dates. This only serves to make the training schedule even more general. In addition, the training schedule does not provide any detailed information about how a given subject will be taught over the 40-150 hours allotted to each topic. The regulations clearly state that a training program cannot be approved if it deals in generalities with no fixed schedule, objectives, or means of evaluation. 8 C.F.R. § 214.2(h) (7) (iii) (A).

The director also found that the petitioner did not establish that the beneficiary would not be involved in productive employment due to the determination that the training appeared to be entirely

on-the-job. The petitioner did not provide a breakdown of how much training would be in the classroom and how much would be on-the-job. In the petitioner's response to the director's request for evidence to show that the beneficiary will not engage in productive employment, the petitioner stated:

The Pharmacy is fully aware of its obligations under the law and that the beneficiary will not be allowed to engage in productive employment. The beneficiary will devote her activities entirely to the completion of the training program developed by Lira's Pharmacy. A copy of the training agreement prepared between Lira's Pharmacy and the beneficiary is attached. The document shows that the nature of the work to be done will be incidental and necessary to the training.

Neither the training agreement nor the training program, however, shows what on-the-job training might be part of the program, or, as discussed above, even what the beneficiary would be doing when not in the formal training. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

The director also found that the petitioner does not have sufficient staff to provide the proposed training. The petition states that the petitioner has two employees. It seems that if one of those individuals will be providing full-time training, which counsel states includes no element of on-the-job training, it would be difficult to maintain the petitioner's business for the duration of the 18-month training program. The petitioner responded to the request for evidence by stating, "[T]he entire training will revolve around the operations of [the petitioner]. The training program has been structured in such a manner that there will be minimal disruption in the company's normal business operations." Again, the petitioner has made a statement, but provided no evidence to support it.

Beyond the decision of the director, the petitioner has not established that the proposed training is unavailable in the beneficiary's home country. The petitioner makes statements about its particular sales strategies and marketing plans that do not exist in the beneficiary's home country. The training program, however, is quite general in its focus, and deals only with general management techniques. There is nothing in the proposed training to indicate that any sort of proprietary information or skills specific to the petitioner would be taught.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.